

**ORDINANCE NO. 2016-11**

**ORDINANCE REPEALING ORDINANCE NO. 2014-09 AND  
DELETING FOREST GROVE CITY CODE SECTIONS 2.11.000 TO 2.11.075**

**WHEREAS**, the City Council adopted Ordinance Number 2014-09 on September 22, 2014, and said ordinance established a ten percent tax on sale of marijuana and marijuana infused products; and

**WHEREAS**, the Oregon state legislature subsequently passed ORS 475B.345, which purportedly preempts the City from imposing any tax or fee on the sale of marijuana items other than imposing up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city if such a tax is approved by the voters of the City; and

**WHEREAS**, the City Council desires to repeal the previously adopted ten percent tax, which is now purportedly preempted by state law;

**WHEREAS**, the City Council held a duly-noticed Public Hearing on this proposed ordinance on May 9 and continued the hearing on May 23, 2016.

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

**Section 1.** The City Council of the City of Forest Grove hereby repeals a tax on the sale of marijuana and marijuana-infused products in the City of Forest Grove as established by Ordinance Number 2014-09 and hereby deletes Forest Grove City Code Sections 2.11.000 to 2.11.075, as shown in Exhibit A.

**Section 2.** Ordinance No. 2014-09 is hereby repealed in its entirety.

**Section 3.** This Ordinance is effective 30 days following its enactment by the City Council.

**PRESENTED AND PASSED** the first reading this 9<sup>th</sup> day of May, 2016.

**PASSED** the second reading this 23<sup>rd</sup> day of May, 2016.

  
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Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 23<sup>rd</sup> day of May, 2016.

  
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Peter B. Truax, Mayor

## ORDINANCE NO. 2016-11

### EXHIBIT A

#### MARIJUANA TAX

##### **2.11.000** — Purpose.

~~For the purposes of this Chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Forest Grove is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.~~

##### **2.11.005** — Definitions.

~~When not clearly otherwise indicated by the context, the following words and phrases as used in this Chapter have the following meanings:~~

~~Gross Taxable Sales. The total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this Chapter.~~

~~Manager. The City Manager, or designee, of the City of Forest Grove.~~

~~Marijuana. All parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~

~~Oregon Medical Marijuana Program. The office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.~~

~~Person. Natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.~~

~~Purchase or Sale. The retail acquisition or furnishing for consideration by any person of marijuana within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.~~

~~Registry identification cardholder.~~ A person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

~~Retail sale.~~ The transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller. Seller. Any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

~~Tax.~~ Either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this Chapter.

~~Taxpayer.~~ Any person obligated to account to the City Manager for taxes collected or to be collected, or from Chapter whom a tax is due, under the terms of this Chapter.

**2.11.010 — Levy of Tax.**

A. ~~Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this Chapter is subject to and must pay a tax for exercising that privilege. This tax is in addition to any other taxes or fees required by the City.~~

B. ~~The amount of tax levied is:~~

1. ~~Ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.~~

**2.11.015 — Deductions.**

~~The following deductions are allowed against sales received by the seller providing marijuana:~~

A. ~~Refunds of sales actually returned to any purchaser;~~

B. ~~Any adjustments in sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.~~

**2.11.020 — Seller Responsible For Payment Of Tax.**

A. ~~Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Manager, on forms provided by the City, specifying the total sales subject to this Chapter and the amount of tax collected under this Chapter. The seller may request or the Manager may establish shorter reporting periods for any seller if the seller or Manager deems it necessary in order to ensure collection of the tax. The Manager may require~~

further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the Manager.

- B. At the time the return is filed, the seller must remit to the Manager the full amount of the tax collected. Payments received by the Manager for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C. The City will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.
- D. If the Manager, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Manager may order such a change. The Manager may establish shorter reporting periods for any seller if the Manager deems it necessary in order to ensure collection of the tax. The Manager also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to this Chapter for the City's account until the seller makes payment to the Manager. A separate trust bank account is not required in order to comply with this provision.
- E. Every seller required to remit the tax imposed by this Chapter is entitled to retain five percent (5%) of all taxes due to the City to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the Manager records of all sales made by the seller and such other books or accounts as the Manager may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The Manager has the right to inspect all such records at all reasonable times.

#### **2.11.025 Penalties and Interest.**

- A. Any seller who fails to remit any portion of any tax imposed by this Chapter within the time required must pay a penalty of 10 percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency

penalty of 10 percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

- C. ~~If the Manager determines that the nonpayment of any remittance due under this Chapter is due to fraud, a penalty of 25 percent (25%) of the amount of the tax will be added thereto in addition to the penalties stated in subparagraphs A and B of this section.~~
- D. ~~In addition to the penalties imposed, any seller who fails to remit any tax imposed by this Chapter must pay interest at the rate one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.~~
- E. ~~Every penalty imposed, and any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.~~
- F. ~~All sums collected pursuant to the penalty provisions in paragraphs A through C of this section will be distributed to the City's General Fund.~~
- G. ~~Waiver of Penalties. Penalties for late tax payments may be waived or reduced if approved by City Council pursuant to City Council policy. Nothing in this subsection requires the City to reduce or waive penalties.~~

**2.11.030 Failure To Report and Remit Tax – Determination of Tax by Manager.**

- A. ~~If any seller fails to make any report of the tax required by this Chapter within the time provided in this Chapter, the Manager will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Manager procures such facts and information upon which to base the assessment of any tax imposed by this Chapter and payable by any seller, the Manager will determine and assess against such seller the tax, interest and penalties provided for by this Chapter.~~
- B. ~~If the Manager makes a determination as outlined in Subsection A, the Manager must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.~~
- C. ~~The seller may appeal the determination as provided in Section 3.25.080. If no appeal is timely filed, the Manager's determination is final and the amount assessed is immediately due and payable.~~

**2.11.035 Appeal.**

- A. ~~Any seller aggrieved by any decision of the Manager with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Council.~~
- B. ~~The seller must file the written notice of appeal within 10 days of the City's serving or mailing of the determination of tax due.~~
- C. ~~The Council's decision is final subject only to judicial review pursuant to ORS 34.010 et seq.~~

- ~~D. The City will serve the findings upon the appellant in the same manner as that used to give notice for a tax determination in City ode Section 2.10.030.B. Any amount found to be due is immediately due and payable upon the service of notice.~~

**~~2.11.040 Refunds.~~**

- ~~A. The City may refund to the seller any tax, interest or penalty amount under any of the following circumstances:~~
- ~~1. The seller has overpaid the correct amount of tax, interest or penalty; or~~
  - ~~2. The seller has paid more than once for the correct amount owed; or~~
  - ~~3. The City has erroneously collected or received any tax, interest or penalties.~~
- ~~A. The City may not issue a refund under this subsection unless the seller provides to the Manager a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Manager. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.~~
- ~~B. The Manager has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Manager will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.~~
- ~~C. If the Manager determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City. The claimant must notify the Manager of the claimant's choice no later than 15 days following the date the Manager mailed the determination and the claimant must do so in a manner prescribed by the Manager.~~
- ~~D. If the claimant does not notify the Manager of claimant's choice within the 15-day period and the claimant is still in business, the City will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.~~
- ~~E. The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Manager acknowledges the claim's validity.~~

**~~2.11.045 Actions to Collect.~~**

~~Any tax required to be paid by any seller under the provisions of this Chapter is a debt owed by the seller to the City. Any tax collected by a seller that has not been paid to the City is a debt owed by the seller to the City. Any person owing money to the City under the provisions of this Chapter is liable to an action brought in the name of the City of Forest Grove for the recovery of the amount owing. In lieu of filing an action for~~

~~the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, if the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50.00 or 50 percent (50%) of the outstanding tax, penalties and interest owing.~~

**2.11.050 Violation Infractions.**

- ~~A. In addition to the penalties provided in Code Section 2.11.025, a violation of this Chapter is punishable as set forth in Code Section 1.095. It is a violation of this Chapter for any seller or other person to:~~
- ~~1. Fail or refuse to comply as required herein;~~
  - ~~2. Fail or refuse to furnish any return required to be made;~~
  - ~~3. Fail or refuse to permit inspection of records;~~
  - ~~4. Fail or refuse to furnish a supplemental return or other data required by the Manager;~~
  - ~~5. Render a false or fraudulent return or claim; or~~
  - ~~6. Fail, refuse or neglect to remit the tax to the city by the due date.~~
- ~~B. The remedies provided by this section are not exclusive and do not prevent the City from exercising any other remedy available under the law.~~
- ~~C. The remedies provided by this section do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.~~

**2.11.055 Confidentiality.**

~~Except as otherwise required by law, it is unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this Chapter. Nothing in this section prohibits any of the following:~~

- ~~A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or~~
- ~~B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or~~
- ~~C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Manager or an appeal from the Manager for amount due the City under this Chapter; or~~
- ~~D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or~~
- ~~E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds \$5,000. The City Council expressly finds~~

~~that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).~~

**~~2.11.060 — Audit of Books, Records or Persons.~~**

~~The City may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be made available within the City limits and be open at any time during regular business hours for examination by the Manager or an authorized agent of the Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Manager may immediately seek a subpoena from the Forest Grove Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.~~

**~~2.11.065 — Forms And Regulations.~~**

~~A. — The Manager is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:~~

- ~~1. — A form of report on sales and purchases to be supplied to all vendors;~~
- ~~2. — The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this Chapter.~~

**~~2.11.070 — Severability.~~**

~~The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs and clauses.~~

**~~2.11.075 — Savings.~~**

~~Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, remain valid and in full force and effect for purposes of all cases filed or commenced during the times this ordinance or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.~~